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No. 391

In the Supreme Court of the United States

OCTOBER TERM, 1960

EASTERN STATES PETROLEUM CORP., PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The memorandum decision of the District Court (J.A. A1)[1] is reported at 177 F. Supp. 944.

The opinion of Chief Judge Prettyman, denying petitioner's motion for leave to file an application for an order designating two judges to complete a three-judge district court (J.A. A4–A14) is reported at 265 F. 2d 593.

The opinion of the United States Court of Appeals for the District of Columbia Circuit (Pet. App.) is not yet reported.

[1] "J.A." refers to the joint appendix to the briefs in the court below, which has been filed in this Court.

JURISDICTION

The judgment of the Court of Appeals was entered on May 12, 1960. A timely filed petition for a rehearing *en banc* was denied on June 7, 1960. The petition for a writ of certiorari was filed on September 6, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a suit in the Customs Court constitutes petitioner's exclusive judicial remedy.

2. Whether, upon determining that the issues raised by petitioner's complaint were not cognizable in a federal district court, the single-judge district court properly dismissed the complaint.

STATUTES INVOLVED

The relevant sections of 28 U.S.C. are set forth in the Appendix, *infra*, pp. 18–19.

STATEMENT OF THE CASE

The underlying controversy—one which petitioner has sought to litigate in a federal district court—involves the tax rate on certain fuel oil imports made between January 1, 1951, and October 11, 1952. (J.A. A15) The factual and statutory background is concededly identical with that in two cases which have been fully litigated through the Customs Court and the Court of Customs and Patent Appeals. (J.A. A17–A19) In both of those cases, the Court of Customs and Patent Appeals held that the fuel oil imports were subject to a tax of ½ cent per gallon and this Court denied certiorari. (J.A. A18, A19) *United States* v. *Metropolitan Petroleum*

Corp., 42 C.C.P.A. (Customs) 38, certiorari denied, 348 U.S. 858; *United States* v. *American Bitumuls & Asphalt Co.*, 44 C.C.P.A. (Customs) 199, certiorari denied, 355 U.S. 883.[2]

Some five months after the denial of certiorari in *American Bitumuls*, the petitioner here, whose protest was and is still pending before the Customs Court, wrote to Assistant Attorney General Doub of the Civil Division of the Department of Justice, and stated, in pertinent part (J.A. A25, A26):

> For reasons heretofore advanced in briefs filed by this office and served on you in [the] American Bitumuls case and in the case of *United States* v. *Metropolitan Petroleum Corp.*, C.A.D. 567, we asserted that assessment beyond ¼ cent per gallon is without authority in law. In both of the above suits, you defended the assessment and contested our contentions.
>
> In each of said cases, the Court of Customs and Patent Appeals rejected our construction of the applicable statute and construed said statute so as to sustain Presidential Proclamation No. 2901, the alleged authority for the assessment. The Court also reversed our contention that said statutes as thus construed would be unconstitutional.
>
> We request you to reconsider your view with respect to these pending cases specifically those in the name of *Eastern States Petroleum Co.*

[2] For a detailed discussion of the factual and statutory background, we respectfully refer the Court to the opinions of the Court of Customs and Patent Appeals in those cases. It may be noted that the attorney for the oil importers in the two earlier cases is also of counsel for the petitioner here.

> v. *United States*, set forth on the stipulation annexed hereto and to enter into the enclosed stipulation agreeing that the correct rate of duty for the merchandise covered by the entries named in said case is ¼ cent per gallon.

On March 24, 1958, the Chief of the Customs Section of the Civil Division of the Department of Justice, on behalf of Assistant Attorney General Doub, responded in pertinent part as follows (J.A. A27, A28):

> Your proposed stipulation sets forth that the merchandise, the subject of the protests, was assessed with duty at ½ cent per gallon under purported authority of Presidential Proclamation No. 2901 and then states that such merchandise is properly dutiable at ¼ cent per gallon.
>
> I cannot sign such an agreement. The cases of *United States* v. *Metropolitan Petroleum Corp.*, C.A.D. 567, and *United States* v. *American Bitumuls & Asphalt Co., et al.*, C.A.D. 661 (certiorari denied Nov. 25, 1957) both uphold the assessment of the ½ cent per gallon tax under the provisions of Section 3422 of the Internal Revenue Code (26 U.S.C.).
>
> Your stipulation is returned herewith unsigned.

Shortly thereafter, petitioner instituted this suit in the District Court (J.A. A14–A22) seeking to enjoin Attorney General Rogers and Assistant Attorney General Doub from enforcing the Act of Congress upon which the imposition of the import tax is based by "bringing about [its] adjudicatory application to plaintiff by the customs courts" (J.A. A19, A21); or,

in the alternative, to enjoin Messrs. Rogers and Doub from refusing to stipulate that the lawful rate of duty was ¼ cent per gallon (J.A. A22). Petitioner also demanded that Secretary of the Treasury Anderson be enjoined "from authorizing his subordinate officials from enforcing the said Act." (J.A. A21, A22.)

The Government filed a motion to dismiss for lack of jurisdiction, urging that the subject matter of the complaint was within the exclusive jurisdiction of the Customs Court (J.A. A29). Petitioner then filed a composite motion for summary judgment, "for an order providing for an integrated hearing of said motion and of defendant's motion to dismiss, and for an order convening a pre-hearing conference." (J.A. A30, A31.) Simultaneously, petitioner filed an "application for the convening of a statutory court of three judges." (J.A. A32.)

On November 25, 1958, the District Court granted the Government's motion to dismiss for lack of jurisdiction (J.A. A1). In its "Memorandum" on the motion (177 F. Supp. 944), the court stated, "Since this Court is wholly without jurisdiction, it is not necessary to convene a three-judge court to pass on that question but action may be taken by a single judge. *Jacobs* v. *Tawes*, 4 Cir., 250 F. 2d 611." The final order dismissing the complaint and denying the petitioner's application for a three-judge court was entered on December 10, 1958. (J.A. A2.)

On December 18, 1958, petitioner filed in the Court of Appeals for the District of Columbia Circuit a "Motion for Leave to File an Application to the

Chief Judge of the Circuit for an Order Designating Two Judges to Complete the Full District Court of Three Judges to Hear Motion for Review." (J.A. A33–A35.) At the conclusion of oral argument of the motion on January 7, 1959, it was denied by Chief Judge Prettyman (J.A. A3).

Petitioner thereafter attempted to take a direct appeal to this Court from the judgment of the District Court. (J.A. A39–A42.) With the filing of its Jurisdictional Statement, it also filed in this Court a motion for leave to file a petition for a writ of mandamus directed against Judge Prettyman and Judge McGarraghy. On October 12, 1959, the Court dismissed petitioner's appeal and denied the motion for leave to file the petition for a writ of mandamus (J.A. C1).

Thereafter, petitioner prosecuted its appeal to the Court of Appeals from the judgment of the District Court.[3] On May 12, 1960, the Court of Appeals affirmed. It concluded (1) that the District Court lacked jurisdiction, and exclusive jurisdiction resided in the Customs Court, and (2) that, in the circumstances, the dismissal of the action by a single-judge district court was appropriate. On June 7, 1960, petitioner's petition for a rehearing *en banc* was denied (Pet. 3).

On June 24, 1960, petitioner filed, in this Court, a "Motion To Recall The Judgment And Reinstate The Appeal," *i.e.*, the appeal which had previously been

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[3] Petitioner had filed a notice of appeal on February 6, 1959; the perfection of the appeal was held in abeyance pending the final disposition of the proceedings in this Court.

dismissed by this Court (Pet. 2). This motion is still pending.

ARGUMENT

The decision below that this suit was properly dismissed by the single-judge district court is clearly correct. Congress was explicit in vesting sole jurisdiction over this type of controversy in the Customs Court and, in these circumstances, a single-judge district court has plain authority to dismiss the complaint even though the convening of a three-judge district court had been requested. Moreover, there is no conflict in decisions. Further review by this Court is, therefore, not warranted.

1. Through the establishment of the Customs Court and the Court of Customs and Patent Appeals, with ultimate review in the Supreme Court by a writ of certiorari, Congress has provided an avenue for obtaining redress for asserted grievances or wrongs occurring in the operation of laws relating to the exaction of duties by customs collectors. And in providing a specialized forum for considering controversies arising out of such exactions, Congress has stipulated that the jurisdiction vested in the Customs Court shall be exclusive. 28 U.S.C. 1583, *infra*, p. 18, declares:

> The Customs Court shall have exclusive jurisdiction to review on protest the decisions of any collector of customs, including all orders and findings entering into the same, as to the rate and amount of duties chargeable and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury; * * *.

To dispel all doubt as to the exclusiveness of the Customs Court jurisdiction, Congress, in defining the original jurisdiction of the district courts, has expressly excepted from the jurisdiction of the district courts "matters within the jurisdiction of the Customs Court." 28 U.S.C. 1340, *infra*, p. 18. Final decisions of the Customs Court are subject to review by appeals to the Court of Customs and Patent Appeals (28 U.S.C. 1541) and, in turn, "Cases in the Court of Customs and Patent Appeals may be reviewed by the Supreme Court by writ of certiora[illegible]" 28 U.S.C. 1256, *infra*, p. 18.

The explicit provisions placing jurisdiction in the Customs Court—to the exclusion of the district courts—mark the continuation of a well-defined and long-established policy.[1] Thus, the courts have re-

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[1] Congress initiated this practice with the Customs Administrative Act of 1890 (26 Stat. 131), in which it undertook the establishment of a separate specialized system of courts for the resolution of customs controversies. In the 1890 Act, Congress provided for a Board of General Appraisers (Section 12, 26 Stat. 136), which was to have jurisdiction over all protests from decisions of the collectors of customs, and appeals for reappraisement. Sections 12–14, 26 Stat. 136–138. Under Section 15 of the 1890 Act (26 Stat. 138), the courts of general jurisdiction participated in this review procedure at the appellate level. However, even this participation was eliminated by the Tariff Act of 1909, 36 Stat. 11, 91. By that Act, Congress withdrew from the courts of appeals jurisdiction to review decisions of the Board of General Appraisers and vested that jurisdiction in the Court of Customs Appeals, which it simultaneously established. Section 29, 36 Stat. 105–107. In 1926, the Board of General Appraisers was redesignated as the Customs Court. 44 Stat. 669. The present provision for exclusive jurisdiction in that court (28 U.S.C. 1583) first appeared in the 1948 revision of the Judicial Code (62 Stat. 943).

peatedly recognized, even in cases which arose prior to the adoption of the explicit provision appearing in 28 U.S.C. 1583, that the Customs Court has exclusive jurisdiction with respect to customs controversies, and that, by the same token, the district courts are without jurisdiction. *Morgantown Glassware Guild, Inc.* v. *Humphrey*, 98 App. D.C. 375, 236 F. 2d 670, certiorari denied, 352 U.S. 896; *United States* v. *Sherman & Sons Co.*, 237 U.S. 146, 152; *Boston Wool Trade Ass'n* v. *Snyder*, 82 App. D.C. 144, 161 F. 2d 648; *United States* v. *Cottman Co.*, 190 F. 2d 805 (C.A. 4), certiorari denied, 342 U.S. 903; *Cottman Co.* v. *Dailey*, 94 F. 2d 85 (C.A. 4); *David L. Moss Co.* v. *United States*, 103 F. 2d 395 (C.C.P.A.); *Riccomini* v. *United States*, 69 F. 2d 480 (C.A. 9); *Patchogue-Plymouth Mills Corp.* v. *Durning*, 101 F. 2d 41 (C.A. 2); *Gulbenkian* v. *United States*, 186 Fed. 133 (C.A. 2).

The fact that an impost is attacked on constitutional grounds does not alter the jurisdictional scheme. In *Horton* v. *Humphrey*, 146 F. Supp. 819 (D. D.C.), affirmed, 352 U.S. 921, the plaintiffs, suing in a district court, sought to enjoin the Secretary of the Treasury and his agents from applying a "special dumping duty" imposed by the Anti-Dumping Act of 1921 to certain of their imports. A three-judge court was convened to consider the plaintiff's charges that the Act was repugnant to the Constitution. The three-judge court ruled that, despite the constitutional

issue tendered, the district court was without jurisdiction. It stated (146 F. Supp. at 820):

> The imposition of a duty may under the statutory plan be reviewed by the Customs Court and the Court of Customs and Patent Appeals (with recourse to the Supreme Court through petition for certiorari). This statutory form of review has been held, in comparable situations, to constitute an adequate remedy at law and therefore to bar equitable relief, and to be the exclusive method of review. * * * [cases cited]. The fact that an importer does not need to pay a challenged duty until this method of review is exhausted goes far to sustain the decisions just cited. * * *

Thus, *Horton* v. *Humphrey* unqualifiedly stands for the proposition that any controversy within the jurisdiction of the Customs Court is exclusively relegated to that court. In this case, petitioner admittedly (see J.A. A17, A18) seeks to relitigate in the district court the very controversy which has been decided adversely to other fuel importers by the Court of Customs and Patent Appeals.[5]

Petitioner further argues (Pet. 17–18) that it is entitled to have its constitutional allegations determined by the District Court because the Customs Court is not a constitutional court. Quite apart from the fact that Congress has declared both the Customs

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[5] Petitioner's attempt (Pet. 16) to interpret *Horton* v. *Humphrey* as holding merely that the district court lacked jurisdiction for failure of plaintiff to exhaust his Customs Court remedies is unfounded. The court's decision, as the opinion clearly indicates, was based on the *exclusivity* of the Customs Court procedure, not on any theory of exhaustion.

Court and the Court of Customs and Patent Appeals to be constitutional courts,[9] it is well settled that the presence of constitutional issues does not call for an exception from the exclusiveness of the Customs Court's jurisdiction. *Horton* v. *Humphrey, supra; Morgantown Glassware Guild, Inc.* v. *Humphrey,* 98 App. D.C. 375, 236 F. 2d 670, certiorari denied, 352 U.S. 896; *Cottman Co.* v. *Dailey,* 94 F. 2d 85, 88–89 (C.A. 4); *Riccomini* v. *United States,* 69 F. 2d 480, 483 (C.A. 9). In all events, the fact that this Court may review customs decisions of the Court of Customs and Patent Appeals provides a full answer.

2. Alternatively, petitioner urges (Pet. 8–10) that the single-judge district court was without power to dismiss the complaint. It is petitioner's position that, when an application for a three-judge court is filed, no matter how patently lacking in jurisdiction the district court may be, the dockets of both the district and circuit courts must be disrupted so that a special panel of three judges may be assembled to go through the mere formality of dismissing the complaint. We think that this contention has no substance.

The three-judge court provisions (28 U.S.C. 2282, 2284, infra, pp. 18–19) did not create any new jurisdiction in the district courts, but merely provided a new procedure for dealing with a specified category of cases already within their jurisdiction. Section 2284 applies only in an "action or proceeding *required by Act of Congress* to be heard and determined by a district court of three judges * * *" (*infra,* p. 19)

[9] See 70 Stat. 532; 72 Stat. 848; 28 U.S.C. §§ 211 and 251.

(emphasis added). The single district judge to whom the application for a three-judge court is presented under 28 U.S.C. 2284, *infra*, p. 19, must therefore make at least one threshold determination, as in all other cases: whether the district court has any jurisdiction whatsoever.[7]

Petitioner admits (Pet. 8–10) that, prior to the enactment of 28 U.S.C. 2284(5), *infra*, p. 19, a single district judge was empowered to make these determinations, and was not automatically required to convene a three-judge court. It contends, however, that this practical rule was deliberately abandoned by Congress when it enacted Section 2284(5), which sets forth the composition and procedure for three-judge courts.

We believe, on the contrary, that Section 2284(5) is applicable only *after* a three-judge court has been convened. To facilitate the business of three-judge courts—which in many circuits must be assembled from widely separated courts (see *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 292 U.S. 386, 391; *Phillips* v. *United States*, 312 U.S. 246)—the section authorizes single members of such courts to perform all functions in connection with the proceedings except to conduct the trial, determine appli-

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[7] E.g., *Carrigan* v. *Sunland-Tujunga Telephone Co.*, 263 F. 2d 568 (C.A. 9), certiorari denied, 359 U.S. 975; *Jacobs* v. *Tawes*, 250 F. 2d 611 (C.A. 4).

See also, *California Water Service Co.* v. *Redding*, 304 U.S. 252; *Ex parte Poresky*, 290 U.S. 30, for the view that a single district judge may dismiss the complaint if no substantial constitutional question is presented. Those cases hold substantiality of the constitutional question to be a jurisdictional requirement.

cations for the issuance or vacation of interlocutory injunctions, appoint masters, order references, "or dismiss the action, or enter a summary or final judgment." These provisions serve simply to delimit the powers of the individual members of the three-judge court and have no bearing upon the power of the judge to whom the application for a three-judge court is presented. See, *e.g., Jacobs* v. *Tawes,* 250 F. 2d 611 (C.A. 4); *Carrigan* v. *Sunland-Tujunga Telephone Co.,* 263 F. 2d 568 (C.A. 9), certiorari denied, 359 U.S. 975; *Wicks* v. *Southern Pacific Co.,* 231 F. 2d 130 (C.A. 9), certiorari and motion to file petition for mandamus denied *sub nom. Wicks, et al.* v. *Brotherhood of Maintenance of Way Employees, et al.,* 351 U.S. 946; *Van Buskirk* v. *Wilkinson,* 216 F. 2d 735 (C.A. 9).

In *Jacobs* v. *Tawes, supra,* the Fourth Circuit squarely rejected the contention that, under 28 U.S.C. 2284(5), the single district judge was required automatically to notify the Chief Judge of the Circuit to call in two additional judges. In that case, the plaintiff sought to enjoin certain Maryland officials from assessing taxes which, he alleged, were unconstitutional as applied to him. The district judge, before whom an application for a three-judge court had been filed, dismissed the action on the ground that it did not involve the requisite jurisdictional amount of $3,000. *Jacobs* v. *Tawes,* 151 F. Supp. 770 (D. Md.). Holding that the order of dismissal was "clearly

correct" (250 F. 2d at 613), Chief Judge Parker, for a unanimous court, stated (*id.* at 614):

> * * * [I]t is not required that the [two] additional judges be summoned, when, as here, it appears from the complaint itself that the case is not one within the jurisdiction of the court. Such a case is manifestly not one "required by Act of Congress to be heard and determined by a district court of three judges" within the language of 28 U.S.C. § 2284. As said in *Ex parte Poresky, supra,* "* * * the provision requiring the presence of a court of three judges necessarily assumes that the District Court has jurisdiction."

Petitioner is forced to the position that *Jacobs* v. *Tawes* and the other above-cited cases, all of which were subsequent to the enactment of the 1942 amendment to the three-judge court provisions, were erroneously decided.[8] Thus, it urges that Congress, in enacting Section 2284(5), intended to overrule *Ex parte Poresky,* 290 U.S. 30, and to prohibit a single district judge, in all circumstances, from dismissing an action where an application for a three-judge court has been made.[9] This construction of Section

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[8] See also *White* v. *Gates,* 253 F. 2d 268 C.A.D.C.; certiorari denied, 356 U.S. 973; *Otten* v. *Baltimore and Ohio R. Co.,* 205 F. 2d 58 (C.A. 2); *Holbrook* v. *Taitano,* 125 F. Supp. 14 (D. Guam).

[9] Petitioner relies principally on an item of legislative history which reveals that one of the bar associations supporting the provision stated that it would overrule *Ex parte Poresky,* and argued that such a result was desirable so as to prevent the single judge from making a preliminary determination of a statute's constitutionality. See H. Rept. No. 1677, 77th Cong., 2d Sess., p. 5 (letter from the Committee on Federal Legislation of the Association of the Bar of the City of New York).

2284(5) was expressly rejected by both the Fourth Circuit in *Jacobs* v. *Tawes, supra,* and the Ninth Circuit in *Carrigan* v. *Sunland-Tujunga Telephone Co.,* 263 F. 2d 568, certiorari denied, 359 U.S. 975, and *Van Buskirk* v. *Wilkinson,* 216 F. 2d 735.[10] As stated in *Jacobs* v. *Tawes* (250 F. 2d 611, 614–615):

> The rule laid down in *Ex parte Poresky, supra,* has not been changed by anything contained in 28 U.S.C. § 2284. That section was enacted to codify and clarify the practice with respect to the composition of and procedure before courts of three judges. Subsection 5 of the section was manifestly intended to regulate procedure after the court of three judges had been constituted, not to abrogate the salutary rule that the judge before whom the action was brought may dismiss it if the complaint does not state a case within the jurisdiction of the District Court.

There is not the slightest indication either in the body of the House Report or in another letter from the Committee on Jurisprudence and Law Reform of the American Bar Association that the provision was designed to overrule any decisions of the Court. On the contrary, the House Report clearly indicates that the real objective of the statute was to define the powers of the individual members of a three-judge court *after* it had convened, in order to allow an individual judge to handle preliminary proceedings provided by the Federal Rules of Civil Procedure, such as depositions and discoveries. See H. Rept. No. 1677, *supra;* 65 A.B.A. Rep. 171. Moreover, even if there were merit to the contention that the provision precluded dismissal by a single judge for want of a substantial constitutional question, the present case is distinguishable since the dismissal here was bottomed solely on the fact that there was no district court jurisdiction whatsoever.

[10] See also Judge Prettyman's opinion (J.A. A4–A14) at 265 F. 2d 593.

The court concluded (250 F. 2d at 615):

> As we have frequently pointed out, statutes should be construed to avoid absurd consequences, as Congress must be presumed not to have intended what was absurd; and it would certainly be absurd to require that, in a case of which the court manifestly lacks jurisdiction, the District Judge must notify the Chief Judge of the Circuit to call in two additional judges, the Chief Judge must call them in and all the cumbersome machinery of a court of three judges must be set in motion merely to dismiss the case. If the single District Judge in dismissing the case for lack of jurisdiction commits error, the error can be corrected by appeal to the Court of Appeals without burdening the Supreme Court with a direct appeal.
>
> Our conclusion is that 28 U.S.C. § 2281 requires a hearing before a District Court of three judges as a prerequisite to the granting of an injunction, not as a prerequisite to dismissing the case when the District Court clearly lacks jurisdiction, and that 28 U.S.C. § 2284(5) forbids dismissal by a single judge only after a court of three judges has been constituted and the procedure applicable to proceedings before the three judges becomes applicable.

There is no substance to petitioner's claim (Pet. 8) that *Snyder's Drug Stores* v. *Taylor*, 227 F. 2d 162 (C.A. 8) and *Aaron* v. *Cooper*, 261 F. 2d 97 (C.A. 8), are inconsistent with *Jacobs* v. *Tawes*. Those cases (unlike *Jacobs* and this case) dealt with situations where a single district judge

had dismissed the complaint for lack of a substantial constitutional question, and not because the subject-matter jurisdiction of the district court did not extend to *that type* of case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1960.

APPENDIX

28 U.S.C. 1256 provides as follows:

§ 1256. Court of Customs and Patent Appeals; certiorari.

Cases in the Court of Customs and Patent Appeals may be reviewed by the Supreme Court by writ of certiorari.

28 U.S.C. 1340 provides as follows:

§ 1340. Internal revenue; customs duties.

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Customs Court.

28 U.S.C. 1583 provides as follows:

§ 1583. Review of decisions on protests.

The Customs Court shall have exclusive jurisdiction to review on protest the decisions of any collector of customs, including all orders and findings entering into the same, as to the rate and amount of duties chargeable and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury; decisions excluding any merchandise from entry or delivery, under any provision of the customs laws; and the liquidation or reliquidation of any entry, or the refusal to pay any claim for drawback or to reliquidate an entry for a clerical error as provided by the customs laws.

28 U.S.C. 2282 provides as follows:

§ 2282. Injunction against enforcement of Federal statute; three-judge court required.

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

28 U.S.C. 2284 in pertinent part provides:

§ 2284. Three-judge district court; composition; procedure.

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

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(3) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

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